

REMARKS

Claims 1-5, 7-20, 23-37 and 41-52 are currently pending. Claims 6 and 38-40 were previously cancelled and claims 21 and 22 are currently cancelled. Claim 1 and 19 are currently amended and support can be found, for example in paragraph [0028]. Claims 7 and 33 are amended to correct a typographical error. Claims 37, 41 and 42 are currently withdrawn from consideration. New claims 43-52 are added and support can be found, for example in paragraph [0028]. No new matter is added.

Examiner Interview

Applicants thank Examiner Dietrich and Primary Examiner Evanisko for the personal interview conducted on June 29, 2009. In this interview, the Examiners agreed that the proposed amendments would overcome the prior art of record.

Claims Rejections - 112

Claims 21, 22 and 33 stand rejected under 35 USC 112, 2nd paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 21 and 22 have been cancelled and this rejection is thus believed to be moot. Claim 33 has been amended to be consistent with independent claim 19 and this rejection is thus believed to be moot.

Claim Rejections - 103

Claims 1-5 and 7-36 stand rejected under 35 USC 103(a) as being allegedly rendered obvious by US Patent 6,353,762 to Baudino et al. ("Baudino"). Baudino fails to disclose "exposing the patient to a first stimulus that elicits pain; measuring the patient's threshold for pain during the first stimulus; then administering a stimulation signal to the stimulator to stimulate the target site; exposing the patient to a second stimulus that elicits pain; re-measuring the patient's threshold for pain during the second stimulus and during administration of the stimulation signal; adjusting the stimulation signal if necessary in response to the re-measurement of the patient's threshold for pain," as recited in claims 1 and 19. Baudino describes techniques for treating peripheral vascular disease. Although Baudino mentions chronic pain in column 9, there is no disclosure of any measurement of a patient's pain threshold.

Baudino does state “a sensor may be included for generating a signal related to the extent of a physical condition for treating a neurological disorder or pain” (col 2, lines 57-60), however this physical condition cannot be considered to be a stimulus that elicits pain, as recited by the present independent claims. Furthermore, there is no disclosure, motivation, teaching, or suggestion to measure a patient’s pain threshold before administration of the stimulation signal and during administration of the stimulation signal, and then adjust the stimulation signal in response to this measurement. Applicants respectfully request withdrawal of this rejection.

Claims 1-5 and 7-36 are rejected under 35 USC 103(a) as being allegedly rendered obvious by Baudino in view of US Patent 5,938,688 to Schiff et al. (“Schiff”). As discussed above, Baudino does not disclose all the limitations of claims 1 and 19 and Schiff cannot cure these deficiencies. Schiff fails to disclose “exposing the patient to a first stimulus that elicits pain; measuring the patient’s threshold for pain during the first stimulus; then administering a stimulation signal to the stimulator to stimulate the target site; exposing the patient to a second stimulus that elicits pain; re-measuring the patient’s threshold for pain during the second stimulus and during administration of the stimulation signal; adjusting the stimulation signal if necessary in response to the re-measurement of the patient’s threshold for pain,” as recited in claims 1 and 19. Schiff describes a method of deep brain stimulation for treating conscious patients having impaired cognitive function. Although Schiff describes that chronic pain can be treated, there is no disclosure of any measurement of a patient’s pain threshold. Furthermore, there is no motivation, teaching, or suggestion to measure a patient’s pain threshold before administration of the stimulation signal and during administration of the stimulation signal, and then adjust the stimulation signal in response to this measurement. Applicants respectfully request withdrawal of this rejection.

Conclusion

Although no fees are believed to be due, the Office may charge any additional fees required, or credit any overpayments, to Deposit Account No. 11-0600.

The Examiner is invited to contact the undersigned at 202-220-4200 to discuss any matter regarding this application.

Respectfully submitted,

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